HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT APPEAL No. 1000 OF 2005

Between:

A.P.State Road Transport Corporation,
Rep by Managing Director, Azambad, Mushirabad,
Hyderabad.
And two others.

... Appellants

AND

A.Narayana Swamy Naidu

... Respondents

Counsel for the Appellants : Shri P.Vinayaka Swamy

Counsel for Respondent : Smt.P.Padmavathi

: JUDGMENT :

15th December, 2006

Per C.V.Nagarjuna Reddy, J

This Writ Appeal is filed against the order of the learned Single Judge dated 18.3.2005 passed in Writ Petition No.26569 of 2003 whereby he allowed the writ petition filed by the respondent.

The respondent was granted license to run business in fancy goods in Shop No.20, Central Bus Station, Thirupathi for a period of three years commencing from 23.12.2000 to 22.12.2003. The respondent pleaded in the affidavit filed in support of the writ petition that he had been paying lease/licence amount and that while his co-licencees were given extension of their licences for a further period of three years in terms of Circular issued by the first appellant bearing No.83/2003 dated 29.10.2003, he was denied the said benefit. The respondent further stated that he made a representation on 28.11.2003 to the second appellant while marking a copy to the first appellant that he is ready and willing to abide all the conditions and stipulations made in the said circular dated 29.10.2003, while requesting for extension of the lease/licence on par with all other similarly placed traders. The respondent further alleged that without renewing his license, the officials of appellants 2 and 3 came to the shop of the respondent and gave an ultimatum to him to vacate the shop by 22.12.2003 or face forceful eviction. The respondent therefore filed the Writ Petition No.26569 of 2003 seeking a writ of mandamus to declare

the action of the appellants in not extending the lease/licence period for a further period of three years in terms of circular dated 29.10.2003, while renewing the licences of co-licencees as being illegal, arbitrary, discriminatory and violative of Article 14, 19 and 21 of the Constitution of India and for consequential direction to the appellants to extend the license period for a further period of three years.

A counter affidavit was filed by the Law Officer of the first appellant Corporation. It is stated in the counter affidavit that the respondent was a chronic defaulter in payment of licence fee, in that, during the licence period, the respondent delayed payment of licence fee on 18 occasions (the details of due dates and the dates of actual payment were enumerated in the counter affidavit). It is further averred that on three occasions, namely, on 11.7.2001, 18.7.2002 and 12.7.2002 fines were imposed on the respondent on complaints from the public. While admitting that the first respondent issued circular No.83/2003 dated 29.10.2003 providing for renewal of licence, the conditions subject to which the licences are renewed are mentioned in the counter affidavit.

It is stated that as the respondent has been a persistent defaulter, his representation dated 28.11.2003 for renewal of licnece was considered and rejected and that as the fresh tenders were to be called for and finalised three months before the expiry of the current licence period, fresh tenders were invited and opened on 12.9.2003. Sri A.Reddapa Choudhary (the son of the respondent) offered the highest bid of Rs.13,500/- as monthly licence fee and his offer was accepted. However the said

Reddappa Choudhary failed to pay the balance security deposit and occupy the stall. The respondent thereafter filed W.P.No.26569 of 2003.

After hearing both parties, the learned Single Judge allowed the writ petition on 18.3.2005 as mentioned above.

Sri P.Vinayaka Swamy, learned counsel for the appellants submitted that the learned Single Judge committed error in allowing the writ petition and granting the prayer sought for by the respondent for renewal of the licence period. He submitted that as the licence period expired on 23.12.2003, the respondent has no legal right for renewal/extension of licence period and that as the respondent being a regular defaulter cannot invoke the benefit of the circular dated 29.10.2003.

Per contra, Smt.P.Padmavathi, learned counsel for the respondent submitted that as per the circular dated 29.10.2003, the respondent has a right for renewal of licence for a further period of three years. She further argued that the appellants have indulged in discrimination by renewing the licences of similarly situated licencees running business in the same bus stand. She has argued that on the facts of the case the learned Single Judge is justified in granting the relief and that no interference is called for with the order of the learned Single Judge.

It is not in dispute that the licence was granted in favour of the respondent to run a stall at Central Bus Station, Thirupathi for a period of three years which ended on 22.12.2003. The allegations made in the counter affidavit filed by the appellants that on 18 occasions the respondent failed to pay the licence fee on the

due dates of payment and that on three occasions fines were imposed was not controverted by the respondent. The rights of the respondent flow from the licence granted by the appellants. Once the period of licence expires the respondent will not have any legal right for renewal of licence, in the absence of any stipulation made in the licence itself providing for renewal. The circular dated 29.10.2003 issued by the first appellant has no statutory force as the same was administrative in nature. Ordinarily such instructions are not enforceable as they do not create any legal right. Even assuming that the respondent is entitled to rely upon such a circular, undisputedly he cannot derive any benefit from the said circular, since being a habitual defaulter, he is not entitled to extension of licence, in view of the Clause (ii) of the circular which reads as under:

> " The licencee seeking extension of licence period should be regular in payment of monthly licence fee, electricity and water charges and the licencee should not be a habitual defaulter."

The contention based on discrimination advanced by the learned counsel for the respondent is not available to the respondent since the respondent failed to give the details of the persons in whose favour licence period was extended and whether they were also habitual defaulters like the respondent. The respondent thus failed to plead that the appellants have treated similarly placed persons differently and violated equity clause enshrined under Article 14 of the Constitution of India.

The learned Single Judge having held that the respondent has no right to get the renewal of the licence after expiry of the

lease period, however granted the relief in the writ petition on the premise that the delayed payment of the licence fee does not amount to violation of the terms and conditions of the lcience or that there is prohibition for the extension of the licence as per the said circular dated 29.10.2003. The learned Single Judge further observed that the appellants without any justification have not extended the licence period in favour of the respondent.

In our view the above mentioned premises on which the learned Judge has allowed the writ petition cannot be sustained. Once it is held that the respondent has no right to get the renewal of the licence extended after the expiry of the lease period, he has no right which can be legally enforced by filing a writ petition. The learned Judge erred in observing that there is no prohibition on the extension of licence contained in the circular dated 29.10.2003 merely because the respondent paid the licence fee with delay. This finding overlooks Clause (ii) of the circular which disentitles a habitual defaulter to seek extension of licence period. Even the three years period for which the extension is sought is coming to an end by 21.12.2006. Admittedly, the possession of the stall was taken over by the appellants on 22.12.2003 itself and this fact is also mentioned by the learned Single Judge in the impugned order. Thus viewed from any angle, the order under appeal cannot be sustained.

For the aforementioned reasons the writ appeal is allowed, the order under appeal is set aside and the writ petition is dismissed, but in the circumstances without costs.

C.V.NAGARJUNA REDDY,J

Date: 15.12.2006

G.S.SINGHVI, CJ

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